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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 407 (RMB)

5 MUGE MA,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 21, 2022
9:00 a.m.

Before:

10 HON. RICHARD M. BERMAN,

11 District Judge

12 APPEARANCES

13 DAMIAN WILLIAMS

14 United States Attorney for the
15 Southern District of New York

SAGAR RAVI

16 Assistant United States Attorney

17 PETER NEIL KATZ

18 Attorney for Defendant

19 ALSO PRESENT:

20 WILLIAM McKEEN, Special Agent, FBI
21 LESLIE LOCKWOOD, MSW

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1 THE COURT: As you all know, we are here today for a
2 sentencing. I see we have some guests. They're very welcome,
3 of course, to be here. And, also, just to give you a heads-up,
4 I have reviewed all the submissions, which are quite
5 impressive, I have to say.

6 So the job of sentencing is a difficult one. Since
7 mid-2005/'6, '7, we know that since then, as a result of
8 Supreme Court decisions, the United States sentencing
9 guidelines are no longer mandatory, haven't been now since
10 then, and, instead, we look at the factors at 18, United States
11 Code, Section 3553(a) in fashioning a fair and reasonable
12 sentence, and I have done that before coming out on the bench
13 today.

14 Those factors include: The nature and the
15 circumstances of the offense, as well as the history and
16 characteristics of Mr. Ma; the need for the sentence imposed to
17 reflect the seriousness of the offense; to promote respect for
18 the law; to provide a just punishment; to afford adequate
19 deterrence, both individual and general, to criminal conduct;
20 to protect the public from further crimes; to provide Mr. Ma,
21 the defendant, with needed educational or vocational training,
22 medical care, or other correctional treatment in the most
23 effective manner. And in doing all that, we look at the kinds
24 of sentences available, the kinds of sentences in the
25 sentencing range established in the sentencing guidelines, even

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1 though, as I said before, those are no longer mandatory. We
2 look at any policy statements that may have been issued by the
3 U.S. Sentencing Commission that may apply. We seek to avoid
4 unwarranted sentence disparities among similarly situated
5 defendants. Here, there's somewhat of a disagreement between
6 the government and the defense, if I read the materials
7 correctly, as to what would be a disparity and what wouldn't.
8 And I don't believe this is a restitution case, but, where
9 that's applicable, we also consider restitution.

10 Mr. Ma is 38. He is married, a citizen of China, and
11 a permanent resident of the United States. He has a Bachelor's
12 degree from Northeastern University in China and an M.B.A. from
13 UCLA in California. He also has a Master's degree in science
14 from Goldey-Beacom College in Delaware.

15 Mr. Ma is an only child. His parents, who are Chinese
16 citizens, have been residing in Manhattan. They both have
17 health issues. According to the presentence investigation
18 report, prior to Mr. Ma's incarceration, he had assisted his
19 parents financially and also took care of their daily needs,
20 including taking them to medical appointments.

21 Mr. Ma advised probation that he was born and raised
22 in China. His parents were very wealthy, but were always busy
23 with work and had little time for him. As a child, Mr. Ma was
24 obese and was often ridiculed and/or abused by others,
25 especially in school, as a result of his physical appearance.

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1 The presentence report states that this abuse
2 manifested itself with eating disorders and then extreme
3 exercise regime with a possible addiction to stimulant
4 supplements.

5 The presentence report also states that Ma suffers
6 from dental issues and low testosterone. He appears to suffer
7 from anorexia and bulimia and has past issues with paranoia.
8 He also takes an unhealthy amount of stimulant supplements to
9 enable him to exercise for several hours a day in addition to
10 his limited caloric intake.

11 According to Mr. Ma's mother, he, Mr. Ma, may suffer
12 from obsessive compulsive disorder and eating disorder.

13 Mr. Ma's wife was interviewed by probation. She did
14 not disclose where she was residing and considers herself a
15 victim of Mr. Ma's acts, as he stole her identity during the
16 course of the commission of financial crimes.

17 The presentence report notes that there were two
18 reported alleged domestic violence incidents between the
19 defendant and his wife, and that occurred during the marriage.
20 That's in the presentence report at paragraphs 69 to 71.

21 The defendant advised probation that his wife suffers
22 from depression and anxiety.

23 Mr. Ma has advised probation, also, that he would like
24 to engage in mental health treatment and marriage counseling
25 with his wife. That's found in the presentence report at

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1 paragraph 80.

2 The defendant also advised probation that he intends
3 to be a fitness trainer in jail and tutor other inmates. Upon
4 his release, he hopes to run his companies again, and aspires
5 to work as an M.B.A. application and scholarship consultant or
6 advisor.

7 Mr. Ma committed these offenses through relief and
8 benefits provided under the Coronavirus Aid, Relief, and
9 Economic Security Act, otherwise known as the CARES Act. The
10 CARES Act authorized forgiving loans to small businesses for
11 job retention and other expenses through a Payment Protection
12 Program, and the CARES Act also expanded an economic injury
13 disaster loan program that provided small businesses with
14 low-interest loans.

15 According to the presentence report, Mr. Ma had been
16 the executive director of New York International Capital since
17 June 20, 2016, and the executive director, also, of Hurley
18 Resources since January 18, 2019, and he applied for relief
19 under both programs for both of his companies.

20 The presentence report states that from at least in or
21 about March 2020 through May 2020, Mr. Ma applied to the SBA
22 and at least five banks for a total of 20 million dollars in
23 government-guaranteed loans for the Ma companies through the
24 SBA's PPP and EIDL programs. In connection with these loan
25 applications, Mr. Ma represented that he was the sole owner and

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1 executive director of the Ma companies, that the Ma companies
2 were located on the sixth floor of a luxury condominium
3 building in Manhattan, and that his companies, NYIC and Hurley,
4 together had hundreds of employees and paid millions of dollars
5 in raises to those employees on a monthly basis. In fact,
6 however, as described below, and as I will go into, Mr. Ma
7 appeared to have been the only employee of NYIC since at least
8 2019, and Hurley, the other company, does not appear to have
9 any employees.

10 In order to support the false representations Ma made
11 in the loan applications about the number of employees at, and
12 the wages paid by, Ma companies, Mr. Ma submitted fraudulent
13 and doctored bank records, tax records, insurance records,
14 payroll records, and/or other financial statements to at least
15 five banks. That's in the presentence report at paragraph 47.

16 According to the presentence report, also, before the
17 discovery of the fraudulent conduct by Ma, the SBA approved a
18 \$500,000 EIDL program loan for NYIC and a \$150,000 EIDL program
19 loan for the other company, Hurley, and a \$10,000 loan advance
20 was provided to NYIC.

21 In addition, a bank approved and disbursed
22 approximately \$8,000 in PPP loans for Hurley, which were
23 fraudulent, in connection with the investigation of this case.

24 As a result, Mr. Ma sought to withdraw his loan
25 applications from the financial institutions and return the

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1 funds. Furthermore, Mr. Ma and individuals purporting to work
2 for NYIC fraudulently represented to a COVID-19 test kit
3 manufacturer and medical equipment supplier that NYIC was
4 representing the New York State Government and the governor of
5 New York in procuring COVID-19 test kits and personal
6 protective equipment to respond to the COVID-19 pandemic.

7 NYIC was not, however, an authorized vendor of New
8 York State, nor has NYIC been authorized to represent New York
9 State in connection with the procurement of COVID-19 supplies.

10 The presentence report also states that in connection
11 with the submission of a fraudulent loan application and
12 supporting documentation, Mr. Ma falsely used the identity of
13 another person, his wife, and a former girlfriend. That's in
14 the presentence report at paragraph 49.

15 Mr. Ma has prior employment as a vice president of
16 China Merchant Bank in New York City. According to the
17 presentence report, he was terminated from this position "due
18 to misconduct, as he was found to be untruthful. He violated
19 the bank's security policy about visitors and was
20 insubordinate." Paragraph 92 of the presentence report.

21 The defendant was also previously employed at HT
22 Capital in New York City and at Citigroup in China. He has no
23 prior criminal history.

24 By submission, dated April 4, 2022, the defense
25 requests a sentence of 24 months, namely, time served, on the

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1 bank fraud count, followed by 24 months consecutive on the
2 aggravated identity theft count.

3 Among other things, the defense argues that the
4 defendant has accepted responsibility and expressed remorse for
5 his actions, and the defense argues that his remorse began when
6 he voluntarily withdrew and canceled the loan applications.

7 The defense also argues that defendant has suffered
8 while in detention as a result of the harsh conditions imposed
9 by the pandemic, as well as suffering from COVID. And defense
10 counsel also states that the defendant was subject to
11 anti-Asian prejudice and hate crimes and abuse by fellow
12 inmates and presumed guards.

13 Defense counsel has also submitted a mitigation
14 report, which has a forensic evaluation prepared by Leslie
15 Lockwood, MSW, and dated April 2, 2022. Ms. Lockwood states
16 that her report is based upon in-person, telephonic, and video
17 interviews conducted with Mr. Ma, as well as written
18 communications with his mother. In addition, Ms. Lockwood
19 reviewed the charging instruments, the plea agreement, and the
20 presentence report.

21 She describes the torment and abuse Mr. Ma suffered as
22 a child as a result of his physical appearance, and how, at the
23 approximate age of 18, he changed his eating habits and his
24 lifestyle. Ms. Lockwood also describes the ailments defendant
25 suffers, including, among other things, anorexia, bulimia,

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1 gynecomastia, and dental issues. And Ms. Lockwood describes
2 the difficulties faced by the defendant and his family living
3 in China and the current difficulties faced by his parents
4 while residing in New York, as well as difficulties faced by
5 the defendant while incarcerated during the pandemic.

6 Ms. Lockwood also details the defendant's progress in
7 school and professionally, including his self-taught fluency in
8 the English language. And Ms. Lockwood describes the
9 relationship between the defendant and his wife. Ms. Lockwood
10 states that the defendant's wife grew up in a strict household,
11 and that her parents retaliated against her choice to attend
12 NYU by claiming she had a serious mental condition and by
13 cutting her off financially.

14 Additionally, Ms. Lockwood reported that Mr. Ma
15 believes his wife suffers from PTSD as a result of some family
16 event earlier on.

17 And defense counsel has submitted numerous letters of
18 support from Mr. Ma's family and friends, including a fellow
19 inmate from MCC and, of course, his own submission, Mr. Ma's
20 own submission. The defendant's parents implore the Court to
21 have mercy on the defendant and to forgive him for his
22 "out-of-control anxiety during the severe pandemic, and forgive
23 him, also, for making ignorant and stupid decisions under the
24 special circumstances under great pressure."

25 Many of his family members affectionately refer to him

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1 as "Brother." The defendant seems to have a large network of
2 friends and family who are shocked to hear about the offenses
3 committed by him. They have stated that he would not make such
4 a mistake, that perhaps he did not understand the rules or the
5 laws in the United States, that it was an unintentional mistake
6 and not subjective wrong behavior. He would not – this is
7 according to his family and friends – deliberately defraud,
8 something must have gone wrong. He is described as
9 hard-working, disciplined, kind, compassionate, and generous.
10 Some individuals, including his mother, and his parents
11 jointly, wrote several letters on his behalf.

12 Defense counsel also submitted a series of photos of
13 the defendant, as well as a chronological history of
14 defendant's personal life as depicted in the photos.

15 Defense counsel describes the commission of these
16 offenses by the defendant as "a horrific, life-altering
17 decision, in a cataclysmically stupid and monumental, yet
18 temporary, lapse in judgment." That's defense submission at
19 page 8.

20 The Court believes that his commission of the offenses
21 go beyond a temporary lapse of judgment.

22 Defense counsel also highlights the fact that others
23 who received PPP funds received sentences in the range of
24 24 months or less, and that the government "demanded a plea to
25 aggravated identity theft with a mandatory 24-month sentence

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1 precisely because Mr. Ma's withdrawal conduct would otherwise
2 be consistent with a probationary sentence."

3 So just so that it's clear, the identity theft is a
4 24-month period of incarceration, and it's consecutive to any
5 sentence that is given with respect to Count Two.

6 The Court presided over the guilty plea in this matter
7 and was not involved in plea negotiations at all with the
8 defendant.

9 Excuse me for one second.

10 (Pause)

11 THE COURT: I was saying that I had presided over the
12 guilty plea in this matter, including taking of the allocution.
13 I was not involved in any plea negotiations at all with the
14 defendant. But after conducting a full allocution, I accepted
15 the guilty plea as knowing and voluntary.

16 It is unclear what the defense counsel is pointing to
17 when stating that the government demanded a plea of aggravated
18 identity theft. I'm assuming – but perhaps counsel can
19 enlighten me, both sides – that that was part of the
20 negotiation of the plea agreement.

21 Mr. Ma, even at the time of his plea allocution, had
22 every right to continue to plead not guilty and to have a trial
23 in this matter, and I concluded, and still believe, that Mr. Ma
24 knowingly and intelligently and voluntarily waived his right to
25 a trial, and pled guilty. I'd be happy to hear from counsel on

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1 that subject, if they wish to be heard.

2 Just going back to the plea allocution: We generally
3 allocute thoroughly and comprehensively and give defendants the
4 opportunity to back out, go to trial; they have every right to
5 a trial by jury. So I continue to believe, as I said, that he
6 knowingly, intelligently, and voluntarily waived his right to a
7 trial, and pled guilty.

8 One question among many – and I include the entire
9 allocution here by reference as part of this record – one
10 question I know I asked him was: Has anybody threatened you or
11 in any way forced you to plead guilty?

12 To which he responded: No, your Honor.

13 And then I asked: Including any attorneys?

14 And he responded: No, your Honor.

15 Here are some other questions that were asked at the
16 plea allocution:

17 I said: First of all, you understand that you have
18 the absolute right to plead not guilty if you wish?

19 And Mr. Ma answered: Yes, your Honor.

20 Then I said: Under the Constitution and laws of the
21 United States, if you were to plead not guilty, you would be
22 entitled to a speedy and public trial by a jury on the charges
23 set forth in the indictment. Do you realize that?

24 He said: Yes.

25 And I asked: And if you decided to have a trial, at

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1 the trial, you would be presumed to be innocent, the government
2 would have to prove that you were guilty by competent evidence
3 and beyond a reasonable doubt with respect to the charges
4 contained in the indictment before you could be found guilty,
5 and a jury would have to agree unanimously that you were guilty
6 of the charges in the indictment, and you would not have to
7 prove that you were innocent.

8 And then I asked: Do you understand those rights?

9 And he said: Yes, I do, your Honor.

10 And then I inquired as follows: And even now, I said,
11 at the plea, this afternoon, early afternoon, as you are
12 entering this guilty plea, you still have the right to change
13 your mind and to plead not guilty, and to go to trial on the
14 charges contained in the indictment. Do you realize that?

15 And he responded: Yes, I do, your Honor.

16 And then I asked: But if you do plead guilty, and if
17 I accept the guilty plea, then you will be giving up your right
18 to have a trial and the other rights that I have been
19 discussing with you, and there will be no trial, but I will
20 still enter a judgment of guilty against you. Do you
21 understand that?

22 And he answered: Yes, I do, your Honor.

23 The plea was taken on June 15, 2021. That's the date
24 of the transcript. Among other pages, page 9, lines 14 through
25 25.

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1 So it was clear to the Court at the time of the plea
2 that Mr. Ma was fully competent and capable of entering an
3 informed plea, that he was aware of the nature of the charges
4 against him and the consequences of pleading guilty, and that
5 the plea of guilty was a knowing and voluntary plea supported
6 by an independent basis in fact, supporting each of the
7 essential elements of the two offenses, Counts Two and Eight, I
8 believe, to which he pled guilty, and I found, and I find
9 today, no basis to disturb those findings.

10 Mr. Ma, as I mentioned before, submitted a letter, a
11 quite lengthy one, to the Court, approximately 46 handwritten
12 page, which appears to be followed by a typewritten version,
13 clearly expressing his remorse and shame and embarrassment for
14 the commission of the two crimes.

15 In his letter, it was unclear to me whether he was
16 acknowledging the full scope of his offenses. For example, on
17 page 11 of the handwritten letter, Mr. Ma states that his
18 incarceration "stripped off my 200-plus associates'
19 opportunities to work," and on page 16 of the handwritten
20 letter, Mr. Ma states, "Unequivocally, my 200-plus associates
21 are authentic."

22 He also apologizes profusely to members of his family,
23 and refers to himself as the golden child, a role model of
24 academic and career achievements for all.

25 By submission, dated April 13, 2022, the government

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1 requests the Court impose a guideline sentence of 42 months in
2 prison for Count Two, the bank fraud count, followed by
3 24 months consecutive for Count Eight, the aggravated identity
4 theft, for a total term of imprisonment of 66 months. That's
5 found at the government's submission at page 2.

6 MR. RAVI: Your Honor, I just want to confirm, that is
7 a request for a below-guideline sentence, not a guideline
8 sentence. The guidelines on Count One is 51 to 63 months.

9 THE COURT: Yes, I'm aware of that.

10 MR. RAVI: Okay.

11 THE COURT: I'm just looking at what I said. I think
12 that's an accurate statement that I made.

13 MR. RAVI: I thought you had referenced it as a
14 guideline sentence.

15 THE COURT: I didn't say anything yet about the
16 guidelines — yet.

17 So I did say that the government requested there be a
18 below-guideline sentence of 42 months in prison for Count Two,
19 bank fraud, followed by a 24-month consecutive sentence for
20 Count Eight, which is the aggravated identity theft, for a
21 total term of imprisonment of 66 months.

22 Is that inaccurate?

23 MR. RAVI: That is correct. Thank you, your Honor.

24 THE COURT: Yes.

25 So the government states that from the end of

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1 March 2020 through mid-May 2020, a period of approximately six
2 weeks, Mr. Ma applied to the SBA and six different banks for a
3 total of over \$20 million in government-guaranteed loans for
4 two companies he owned, New York International Capital, which I
5 referred to several times earlier as NYIC, and Hurley Human
6 Resources. He did that through the SBA's PPP and EIDL program.
7 In connection with these loan applications, Ma falsely
8 represented, among other things, that his companies together
9 had hundreds of employees and paid millions of dollars in wages
10 to those employees on a monthly basis. In fact, however,
11 Mr. Ma appears to have been the only paid employee of his
12 companies since 2019. That's a quote, that's the end of the
13 quote, the government submission, at page 3.

14 The government argues that defendant's crimes were
15 extremely serious. I think everybody agrees to that.

16 The government states that defendant painstakingly
17 fabricated a multitude of documents to support his false
18 representations in the loan applications, which included bank
19 records, tax records, insurance records, payroll records, and
20 audited financial statements. Moreover, he used the identities
21 of people he knew, including his wife and former girlfriend, to
22 submit fraudulent documents in connection with the loan
23 applications.

24 As probation determined, the defendant used these
25 identities to falsely portray his companies as legitimate

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1 companies with multiple employees in the same way that he used
2 his companies' websites to falsely portray them as global, even
3 though he was the only paid employee, page 14 of the
4 government's submission.

5 The government acknowledges that defendant withdrew
6 and canceled his loan applications prior to receiving any
7 money, but the government argues that the likely reason the
8 defendant withdrew and canceled his applications was because he
9 worried he was under investigation.

10 The government also argues that specific and general
11 deterrence are required in this case, as the only reason the
12 defendant committed the offenses was due to greed, and the
13 Court needs to send a message to others that such conduct has
14 severe consequences.

15 With regard to the two-year sentence sought by the
16 defense, the government states, "To that end, based on data
17 provided by the judiciary sentencing information tool provided
18 by the U.S. Sentencing Commission, the government notes that
19 during the last five fiscal years, from 2017 through 2021,
20 there were 51 defendants who had the same guideline range of 51
21 to 63 months as the defendant calculated under United States
22 Sentencing Guidelines Section 2B1.1 and who were convicted of
23 at least one count of aggravated identity theft. Of those 51
24 defendants, the average length of imprisonment imposed was
25 63 months, and the median length of imprisonment imposed was

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1 64 months. The government respectfully submits that the
2 defendant's request for a total sentence of two years is wholly
3 insufficient to achieve the purposes of sentencing." That's
4 found at the government's submission at page 14.

5 I note that Mr. Ma has been in custody for
6 approximately 23 months already, since on or about May 21,
7 2020.

8 I've also received and reviewed the presentence
9 investigation report prepared on October 6, 2021, together with
10 the addendum and the sentencing recommendation, dated
11 November 3, 2021. I also have the correspondence, dated
12 April 4, from defense counsel, Peter Katz, which included,
13 among other things, the forensic evaluation, dated April 2,
14 from Leslie Lockwood, and correspondence, dated April 12, 2022,
15 from the Assistant U.S. Attorney.

16 So at this time, I would ask Mr. Katz and Mr. Ma if
17 they had the opportunity to read and discuss the presentence
18 investigation report along with the addendum and sentencing
19 recommendation?

20 MR. KATZ: We have, your Honor.

21 THE COURT: Mr. Ma, you went over that presentence
22 report with counsel?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And you read it together, I suppose, and
25 discussed it with Mr. Katz; is that fair to say?

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MR. KATZ: Yes, Judge, we reviewed it extensively.

THE COURT: Mr. Ma, is that fair to say?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do either of you have any remaining objections at this point with the presentence report?

MR. KATZ: Your Honor, we submitted our objections, and we maintain those objections, but other than those, there are no additional ones.

THE COURT: Okay.

And, Mr. Ma, any additional objections from you?

THE DEFENDANT: I'm on the same page with my counsel. Thank you, your Honor.

THE COURT: You bet.

How about the government, do you have any objections?

MR. RAVI: No, your Honor.

THE COURT: So I will return the presentence report to probation, which is our practice. And I'm happy, at this time, to hear from defense counsel and from Mr. Ma and from government counsel.

MR. KATZ: Thank you, your Honor. May I take my mask off?

THE COURT: Yes, you can. Sure.

MR. KATZ: Thank you. Thank you for the opportunity, Judge.

I want to say, you've reviewed the record quite

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1 clearly. There are a couple of things I'd like to, I think,
2 clarify at your Honor's request and some other things that came
3 up and also talk generally about Mr. Ma, about his offenses,
4 and about punishment that we're here about today.

5 First, Judge, I think Mr. Ma is a good person who
6 made, as I wrote and you read, a cataclysmically stupid
7 decision without question. He doesn't deny that. He came, and
8 he pled, and he accepted his responsibility, and, as I
9 mentioned -- and I will talk about it in a second -- he did so
10 very early on, I think earlier than anyone else who has been
11 convicted of a PPP fraud case.

12 But as you can see from the dozens of letters in
13 support of Mr. Ma, it's hard to confine him to this one event
14 in his life. The government -- they're advocates, and they're
15 going to do that -- they're going to focus on the bad thing that
16 he did, and, no question, it was bad. But he's much more than
17 just that one thing. He's 38 years old. He's lived a very
18 full life, and he's done a lot of good things -- many, many good
19 things -- in his life as well, and as your Honor referenced,
20 under 3553(a), you should take those things into account, the
21 history and characteristics of the person, not just of the
22 crime. And I think that the letters that you received, the
23 mitigation submission from Ms. Lockwood, from my submission
24 that you see, you should see Mr. Ma as much more than just this
25 offense.

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1 This was -- to use the kind of phrase that we used to
2 use when the guidelines were mandatory, this was aberrant
3 behavior, this is not consistent with the rest of his life.
4 And you may ask, well, how is that possible, how does that
5 happen? People make mistakes. This was a terrible mistake.
6 He has paid for it already, and he will continue to regardless
7 of your sentence. The collateral consequences of his conduct
8 will follow him for the rest of his life, and that is something
9 he will have to deal with, without doubt.

10 But it's also important, I think, to pay attention to
11 how he handled this once he came to the realization that this
12 was a terrible crime and terrible mistake that he had made.
13 Again, unlike anyone else who's been prosecuted -- there have
14 been hundreds of people prosecuted for PPP fraud in this
15 country. I have reviewed as many as I could find -- I can't say
16 it's every one because I don't know for sure -- but hundreds of
17 them. Not one other person withdrew or canceled their
18 application. He's the only one who did that. The government
19 says, well, it's only because the banks had found out about
20 what had happened. They haven't submitted any evidence to
21 indicate that Mr. Ma knew that the bank had frozen the funds or
22 conducted any kind of investigation.

23 And I reference this with regard to the guidelines,
24 and I'll talk more about them in just a second, if I may, but,
25 for purposes here, it's really interesting the way the

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1 guidelines work under 2B1.1. When you look at the intended
2 loss, we agree that the intended loss here was about
3 \$6.9 million, because that was the value of some of the
4 applications, right? But the guidelines here are very -- I
5 don't want to say malleable, that's probably not the right
6 word, but very binary, either it is or it isn't, and, in this
7 case, there is a commentary in the advisory notes that indicate
8 that if someone withdraws their application for a loan, as this
9 was, then you reduce the amount of the loss by the amount that
10 they've withdrawn. Here, it would be 100 percent. He
11 withdrew, and there's no doubt that he withdrew all of his
12 applications.

13 And so, in that instance, the guidelines would then
14 revert back to zero loss, which would be a zero to six from a
15 guideline calculation standpoint. But because the advisory
16 note says that if a victim identified the fraud before he
17 submits the withdrawal, you don't do that subtraction, right,
18 and it is true that they identified it, but that doesn't speak
19 to what was inside Mr. Ma's head. There is no evidence -- the
20 government has not presented any evidence -- that Mr. Ma did, in
21 fact, know that he was under investigation or that the bank had
22 identified the fraud. The facts are that they had, and that's
23 why we can't argue, from a guideline perspective, that the
24 guidelines are incorrect. But it's precisely why, I think, the
25 guidelines in this case are really -- I don't want to say

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1 irrelevant, because you must look at them, but they're really
2 wholly inappropriate in this case because of the unique nature
3 of the circumstances and the facts of what happened.

4 When you look at the characteristics of Mr. Ma, you
5 should take into account that he did withdraw, and that nobody
6 else had. No one else who had done this withdrew their
7 applications.

8 There is no restitution in this case. In almost every
9 other case that I reviewed, people received millions of dollars
10 in PPP funds, and they didn't put it into their company, they
11 spent it -- they bought cars, they bought houses, they bought
12 mink coats, all kinds of personal items -- and did actually take
13 money and spend it that could have been used for other people
14 who really did need it.

15 Mr. Ma realized his mistake, and he corrected it early
16 on, not just at his plea. And I will tell you that in every
17 interaction that I have had with him, he has been -- I've been
18 in criminal justice for 27 years. I was a prosecutor for 17.
19 He is, if not the, one of the most remorseful people that I
20 have met for his conduct. Every time I talk to him, he talks
21 about how sorry he is for what happened. And I hope that that
22 came across in our written submissions and from his letter.

23 I know your Honor referenced one point about his
24 associates, and I will tell you that the use of that word was
25 intentional, not employees. As you referenced, English is not

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1 Mr. Ma's first language, and I think the term "employee" is
2 also a very technical one, even though it's a generic term, and
3 it's true there were not people who were receiving W-2s and
4 employed by his two companies. However – and I think the
5 government has acknowledged this, at least in my conversations
6 with AUSA Ravi – that there were many other people who did do
7 work for Mr. Ma under NYIC and Hurley, and they were
8 independent contractors, they were interns, but there were
9 people. This was not a fake company, this was not something
10 that was made up out of whole cloth. Should he have submitted
11 the applications? Of course not. But these were real
12 companies, and there are real people who he references as the
13 200 people. This is not a fantasy or a fabrication. They are
14 real, and they have been identified. So I think that's just to
15 answer your Honor's point about that.

16 THE COURT: Counsel, do I understand, from what you've
17 said so far, that you are suggesting there should be a zero
18 months attributable to Count Two, but 24 months would be
19 attributed to the identity theft, the consecutive count?

20 MR. KATZ: Yes, your Honor. That was in our
21 submission as well. Because of the way -- and I'll talk about
22 it some more, but just from a guideline perspective, granted,
23 the guidelines are, we believe, accurate, but inappropriate.
24 If you kind of made that one adjustment, the guidelines would
25 put him at a zero to six, and we believe that that, in the

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1 reality under all the 3553(a) factors, is appropriate here, and
2 I will talk about some of the other reasons in a minute, but,
3 yes, on Count Two, effectively time served, or zero months, a
4 probationary sentence. I understand, technically, it wouldn't
5 be probation because he's going to receive 24 months on the
6 aggravated identity theft, but a collective 24 months.

7 THE COURT: It would be zero?

8 MR. KATZ: Correct. Or time served, either one,
9 however your Honor wishes to fashion it.

10 And I will talk about why, in addition, some other
11 reasons as well now.

12 You also referenced, your Honor, the guidelines having
13 been mandatory for a period and advisory since about 2005,
14 2006 -- or 2004, sorry, and 2006. In January of 2006, it fully
15 switched. It's interesting that the guidelines have now been
16 advisory for as long as they were mandatory -- we're just about
17 at that tipping point -- and yet -- and nothing against AUSA
18 Ravi, my relationship has been good and he's been totally, I
19 think, reasonable in his position representing the government,
20 but it seems to me that the government is still in a place
21 where the guidelines are the primary basis of their
22 recommendation. And I will say, again to his credit, in my
23 experience, having been in the government, and now as a defense
24 attorney for the last ten years or so, it's very rare for the
25 government to recommend anything other than a guideline

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1 sentence. It is the — I'll use the colloquial phrase — the
2 knee-jerk reaction, if the guidelines say it, that's what the
3 sentence should be.

4 Here, I appreciate that AUSA Ravi has not recommended
5 that, that he's recommended a below-guideline sentence, and I
6 think to your Honor, that's a significant indication that this
7 crime is different than the typical crime, and I'll talk now
8 about what is a similarly situated defendant.

9 The government, in their papers, indicate, well, it's
10 anyone who has a guideline sentence of 51 to 63 months and an
11 aggravated identity theft conviction. Judge, those are not
12 similarly situated defendants. We didn't see anything about
13 them; those cases could be totally different. 2B1.1 is the
14 catchall of all catchalls, aside from drug offenses, in the
15 guidelines. They have nothing to do with Mr. Ma whatsoever.
16 What cases do? Cases that involve submissions of PPP and EIDL
17 loans to the government, and those are the cases that we cited.
18 Those are specifically the cases that are relevant here, that
19 are similar to him, as close as you can get, right, with one
20 important distinction I mentioned before — he withdrew his
21 application. He has effectively zero restitution. Whether
22 it's a zero guideline or not, it's zero restitution. Those
23 other cases do not. People got millions and millions of
24 dollars. We referenced, I believe, 20 or 22 different cases
25 where defendants received significant amounts of money and

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1 still received a sentence of 24 months for their conduct.

2 I'll talk now about the aggravated identity theft.

3 THE COURT: Were those Southern District cases? I
4 couldn't tell.

5 MR. KATZ: I don't remember if there are any Southern
6 District cases in there. I don't believe there were. I don't
7 believe there were any in that grouping.

8 Judge, with regard to the aggravated identity theft:
9 Your Honor just detailed the plea. There's no question he pled
10 guilty to it. That wasn't -- if that's the way your Honor took
11 it, that we were somehow withdrawing our --

12 THE COURT: No, no, no.

13 MR. KATZ: -- acceptance, that's not what we mean at
14 all.

15 THE COURT: I just wanted to make clear and close
16 any -- whether there were any issues that were open or not, I
17 just wanted to make sure that it was clear, and that it's
18 important to me that, particularly since I took the plea, that
19 I understood at the time that it was knowing and intelligent
20 and voluntary and all that, because I would personally feel bad
21 if someone didn't do it under those circumstances.

22 MR. KATZ: Understood. And we're not withdrawing the
23 plea, we're not saying it wasn't voluntary.

24 The purpose of mentioning that in our submission was
25 because it was involved in plea negotiations, right? And

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1 because aggravated identity theft -- let me step back for a
2 second.

3 Mr. Ma was indicted on three counts of aggravated
4 identity theft. And from a technical standpoint, we agree that
5 his conduct falls within the scope of the statutory language
6 and the case law that has followed it here in the Second
7 Circuit. I may have a difference of opinion about that, but
8 that is the case law. And so we had long discussions about
9 what that meant. I had many conversations with AUSA Ravi about
10 not just the significance of a plea, but whether that was
11 necessary or appropriate in this case. And it was the
12 government's position that if Mr. Ma wanted to plead guilty to
13 a plea agreement with the government, that he would have to
14 plead guilty to one count of aggravated identity theft in
15 addition to the bank fraud count.

16 He was facing three counts, and that would have been
17 six years consecutive to something else. So, yes, he could
18 have gone to trial, but that obviously exposed him to the
19 potential for a much longer sentence. And so we made the
20 decision that that was an appropriate move for Mr. Ma, it was
21 in his best interests.

22 That said, I think it is relevant and important for
23 your Honor to look at what the actual conduct was with regard
24 to the aggravated identity theft here, and to put it in context
25 with all the other PPP fraud cases that have come down the pike

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1 over the last two years.

2 With regard to the latter, again, by my review of
3 hundreds of convictions and sentences, Mr. Ma is the only
4 person in the country who actually pled guilty to aggravated
5 identity theft in addition to an underlying bank fraud. And in
6 this context -- now I didn't review the record of every single
7 one of those cases to see if this is true, but I think
8 logically it follows -- if you submitted a PPP loan application,
9 one of the things you had to do was reference employees or
10 other employees, and you would have to use somebody's name in
11 that fraudulent application, and, therefore, anybody who
12 submitted a false application for a PPP loan, de facto, was
13 also guilty of aggravated identity theft. By that, I mean
14 anybody who --

15 THE COURT: I don't know about the de facto. That's
16 your surmise.

17 MR. KATZ: Of course. But if you think about it, and
18 the way that the statute is written, the use of someone else's
19 name during a fraudulent submission for a loan application is,
20 by definition, aggravated identity theft. And it's not to say
21 that Mr. Ma didn't do that, it's to say that he has been
22 treated, for whatever reason, differently than every other
23 person who has been charged by the same government in these
24 types of cases. And we accepted that, we felt it was in his
25 best interests, but it is also, I think, something your Honor

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1 can and should take into account, that nobody else was -- and
2 you used the word, and I think the word I used was -- remanded
3 by the government, in plea negotiations, that he plead guilty
4 to that. So I think that that's relevant to consider in
5 determining where he falls within the scope of all the people
6 who have committed these offenses.

7 And I think it's also important to look at --

8 THE COURT: Just on that latter point, that's
9 certainly not something I can take into account. I mean, I
10 don't know. You have all these other cases, and they don't
11 have an identity theft count in the plea, so if they don't have
12 it, they don't have it. I can't really surmise either what
13 they were thinking or --

14 MR. KATZ: I'm sorry, that who was thinking?

15 THE COURT: The people who signed the plea agreements.

16 MR. KATZ: Oh, I understand, but they all involved --
17 well, every one that we cited anyway and all the other ones --
18 almost all the other ones are pleas. They all pled guilty --

19 THE COURT: I think what you're saying is -- and I will
20 accept that as fact, you've done the research -- that you didn't
21 find any other cases that have two counts in the plea
22 agreement, one of which was an aggravated identity theft. That
23 was really the only --

24 MR. KATZ: Correct.

25 THE COURT: -- 100 percent surmise I can --

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1 MR. KATZ: Correct, correct.

2 But, also, I think it's -- look, it's going to be
3 24 months on that count -- there's no debate about that.

4 THE COURT: Yes, I get it.

5 MR. KATZ: None of us can change any of that, but I
6 think it is also, for the purposes of 3553(a), important to
7 think, and for your Honor to know, what that conduct actually
8 was. Aggravated identity theft sounds significant, and it is,
9 but, typically, we think about stealing someone's credit,
10 identity, and going and committing some other offense. Here,
11 what happened was Mr. Ma submitted the applications with his
12 name. He's the one who signed the applications for all of
13 these loans. In some correspondence with the banks, he used a
14 work email that had been legitimately set up for other people
15 to communicate back with the banks. And in those emails --
16 now, my research tells me that an email is not identity -- an
17 identity for purposes of the statute, but someone's name is.
18 And because, in those emails, it actually listed that person's
19 name and indicated that or referenced that that email was
20 coming from that person, in discussions with the bank about the
21 applications, that qualifies as aggravated identity theft.

22 I think that is, while, again, technically violative
23 of the statute, not the typical conduct that we see with regard
24 to someone who has committed or has been prosecuted in this
25 district and elsewhere for aggravated identity theft, just to

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1 put it in a frame of reference for your Honor.

2 I'd like to make one other comment about the
3 government's submission. You referenced that they said that
4 the defense request was not only inappropriate, they also used
5 the term "unlawful." I think it's important for your Honor to
6 know, and I think that that is not true. It is a totally
7 lawful sentence for you to sentence Mr. Ma to 24 months. He
8 would get 24 months on Count Eight, the aggravated identity
9 theft, and zero months on Count Two, the bank fraud.

10 THE COURT: Yes, it probably is true, but just if you
11 want to know my candid reaction to that, it would be the tail
12 wagging the dog, in my opinion.

13 MR. KATZ: Look, you're the Judge. You have to make
14 the decision. I'm going to make the arguments that I think --

15 THE COURT: It just would seem a little odd to me.

16 MR. KATZ: It would seem odd, but I think this case is
17 a little odd as well, given some of the factors that I'm
18 referencing.

19 If I can now talk a little bit about punishment and
20 the purposes of 3553(a) for Mr. Ma. And we've referenced this,
21 I'm not going to go through all the reasons that we put in our
22 papers, and I appreciate your Honor's recitation, and I know we
23 submitted a lot more than typical, and I gave great thought to
24 actually do that because I know it was a lot for your Honor to
25 read. I thought it was appropriate here so you really could

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1 get a flavor for Mr. Ma and his station in life.

2 THE COURT: I thought it was all valuable. I've had
3 one other case that I can recall vividly that had -- not a case
4 like this, but it involved sanctions, where there was a similar
5 kind of submission, with business associates, family, friends,
6 and explanation, and I thought in that case, it was very
7 helpful, and this case as well.

8 MR. KATZ: I'm glad, your Honor.

9 I just want to say, with regard to punishment, what is
10 the purpose, what are we doing here? Again, I'll go back to
11 the government's position, and I think, again, nothing against
12 AUSA Ravi -- as I said, I've sat in his seat -- it's very hard to
13 know what the punishment actually is when somebody is sitting
14 in jail, particularly when those jails are the MCC and MDC here
15 in New York. I didn't realize this until I became a defense
16 attorney. They are draconian. The punishment is severe, and I
17 don't use those words lightly. I mean, I was shocked because I
18 did not realize this during my 17 years as a prosecutor. The
19 conditions -- MCC, while Mr. Ma was there, was closed down.
20 That's, I think, unprecedented. They were terrible, and they
21 were terrible in a terrible time, during COVID.

22 Mr. Ma contracted COVID while he was in jail. He
23 suffered many other -- the lockdowns, the inability to
24 communicate, our difficulties communicating, all of these
25 things were very serious punishment. And if you think, okay,

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1 one of the purposes of sentencing is deterrence, the time that
2 he has spent there already, anybody who did that would not want
3 to go back. And I know Mr. Ma does not want to go back. He is
4 remorseful, but he also understands the conditions that he was
5 subject to and would never go back to those conditions.

6 So I think it's really important to think about that
7 in this case. It's not just kind of a passing glance, oh, he's
8 been incarcerated, it was the MCC, it was COVID. They are very
9 real, and something I think your Honor should not take lightly
10 in weighing all of the factors. I think that's an important
11 factor.

12 I think, also, looking at similarly situated
13 defendants is also important in this case, and I think the
14 way -- quite candidly, I think the way we referenced it is much
15 closer to reality than the government. I think the
16 government's doing some guidelines gymnastics in trying to come
17 up with a 63/64 months as a median whatever. They are facts,
18 but I don't think they are really relevant here, as I described
19 before. I think if your Honor is looking at, okay, what have
20 other judges who have sat in your position done with other
21 similarly situated defendants, maybe worse defendants, in the
22 term of the crime they committed because they actually received
23 money and spent the money, and many of them got 24 months.

24 THE COURT: Are any of those Eastern District cases
25 that you cited? You said you didn't know if any S.D.N.Y. --

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1 MR. KATZ: I don't believe there were any New York
2 cases in those.

3 THE COURT: At all?

4 MR. KATZ: Honestly, I don't remember -- and I could be
5 wrong -- remember seeing any Eastern District cases that have
6 already been sentenced. I think there have only been a couple
7 S.D.N.Y. sentences as well, but I'm not sure.

8 I think if you look at all of these factors, Mr. Ma's
9 history, the difficulty he had growing up, and his parents'
10 situation -- that's something I haven't referenced, which I know
11 were in the papers and your Honor talked about -- his parents
12 came to the U.S. and have been here -- they're Chinese, they
13 don't speak much English, they've been living here for two
14 years to support him emotionally and psychologically. They
15 both suffered significantly, and, in fact, I learned, I think,
16 even after our submission, Mr. Ma's father, who is here, even
17 though he was advised not to come because of his physical
18 condition. He broke his hip on his way to go visit Mr. Ma and,
19 in fact, had very serious effects in the hospital in the
20 emergency room where he almost died.

21 Of course, Mr. Ma has to be punished for his conduct,
22 but he also is an only child in a Chinese family where it is
23 the culture and his belief he needs to take care of his
24 parents. And, in this case, he really does need to take care
25 of his parents. They are ailing, they are frail, and they're

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1 in a country they don't know anything about, and I think that
2 that's something your Honor can and should take into account as
3 well.

4 Sometimes I think in this process, we use the numbers
5 as currency – how long someone goes to jail becomes like money,
6 okay, it's this amount. I think here, your Honor, I really
7 think you need to look at all of the factors, you need to look
8 at all of the aspects of Mr. Ma, of the crime, of his
9 withdrawal, of his remorse, of his family condition, of his
10 incarceration thus far, in fashioning a sentence that is
11 sufficient, but no greater than necessary, and not just based
12 on numbers. I think this is an unusual case because of all
13 those factors, and that's why our recommendation and our
14 request is for, granted, an unusual request, but I think it's
15 appropriate here. I don't think people in the public who saw
16 this, who read this record, who see what happened, saw what
17 happened in this case would think that that was an unfair
18 sentence, that somehow Mr. Ma got away with it. I don't think
19 that that's how the public would look at it. I don't think --
20 I certainly know that's not how Mr. Ma looks at it, and I don't
21 think your Honor should look at it that way either.

22 I appreciate your time. Thank you.

23 THE COURT: Okay.

24 Mr. Ma, do you wish to be heard?

25 THE DEFENDANT: Yes. Thank you for the opportunity,

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1 your Honor. May I ask a quick question?

2 THE COURT: Yes.

3 THE DEFENDANT: To my counsel?

4 THE COURT: Sure, absolutely.

5 THE DEFENDANT: Thank you.

6 (Defendant and counsel confer)

7 THE DEFENDANT: Sorry, your Honor.

8 THE COURT: That's all right. Take as much time as
9 you need.

10 (Defendant and counsel confer)

11 THE DEFENDANT: Excuse me, your Honor. Thank you for
12 the time. And I think I'm ready to speak.

13 THE COURT: My pleasure. I'm happy to hear you.

14 THE DEFENDANT: Again, very guilty, very guilty. It
15 was me who filed in those false applications, with false
16 documents, and I must take a hundred percent responsibility for
17 it. Not only I'm ashamed, but, also, I will put it this way,
18 it's an immense ignominy on me and my family.

19 I absolutely know any excuse, not for this, not only
20 my stupidity, but, also, again, putting it this way, something
21 much stronger – it's ludicrous, ridiculous, laughable, folly
22 and lunacy, insanity, stupidity.

23 So my applications disturbed the government's pandemic
24 relief efforts made to our country. That is why I hate, I
25 detest myself so much, because, in fact, very honestly, so

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1 much, too, I love this country, I love America, that many
2 immigrants here actually see America as home, but I see it as
3 my tomb. I know I will die here in my tomb, and, if necessary,
4 I will die for America. But before that, I now clearly know
5 that my best way to love America is to actually meticulously
6 abide by law and order.

7 Therefore, I just say, today, what I really want to
8 enunciate is for my very awful wrongdoing, including everything
9 that you just mentioned, your Honor. So I'm very, very sorry
10 to my country, America, and I'm very, very sorry to you, your
11 Honor, to the court, everybody here, to the government, to the
12 banks, and to all those my fellow small business owners and
13 their employees, and to all those associates who used to work
14 at my company before, at my two companies, NYIC and Hurley, as
15 all of them.

16 I'm also sorry to my clients, both here – domestic –
17 and overseas. And I am so, so sorry to my elder parents, who
18 are sitting behind me. I failed them. I failed them as a son,
19 and I have to fulfill that. And I'm also very, very sorry to
20 my wife, my former girlfriend, my great family.

21 Your Honor just mentioned that I didn't mention in my
22 letter that I'm a golden child, but what I mean here is I
23 failed them. So as an example, for so many years, I failed
24 them now in the future. As I said in the letter, I will tell
25 everybody that, so to perfectly abide all the laws on a very

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1 minimum for all benefits in this country, that we have to
2 fulfill perfectly.

3 I also have to say sorry to all my friends, including
4 my coach, sitting behind me, and my very close friend sitting
5 next to my coach. I actually now feel very, very shameful. I
6 feel like I'm too abominable to turn around to see either my
7 parents or my coach and my friends because what I did was
8 totally opposite to what all they have been teaching me for so
9 many years.

10 So, in fact, I'm so sorry to everybody in our society.
11 That's how I'm feeling now today.

12 Unequivocally, I just say unequivocally, a steep price
13 was paid by my companies and by my family and by myself,
14 clearly. To be accurate, especially the MCC and MDC, they are
15 literally sordid.

16 THE COURT: They are?

17 THE DEFENDANT: Sordid, like dirty, harsh, draconian,
18 and extremely cruel and -- yeah, you get the idea, your Honor.
19 I value your time.

20 It's like many people are saying, that it's like two
21 pungent armpits of our lady Statue of Liberty, because many of
22 us can see the lady Statue of Liberty from the yard, so it is
23 truly harsh. But that's the hard way. The real is how we
24 think of it, actually, the real part of her soul was those
25 literally months after months, almost years after years, of the

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1 extenuated, virtually 24/7 lockdowns, and that's very unusual.

2
3 And then I got COVID. And then I got malnutrition
4 diagnosed by the medical team. During my COVID, 24 --
5 virtually 24/7 lockdowns, isolation, COVID isolation. I was in
6 the COVID isolation unit. No any medication was given during
7 that entire time in the COVID isolation. And, actually, for
8 years, I been enduring, actually, I have to say, the rampant
9 corruptions in the BOP and the raging anti-Asian crimes in
10 recent years against we Asians, especially in the jails,
11 committed by some very violent gangs, such as those murder and
12 even Mexican gangs like MS-13. I'm not complaining here, but
13 the reality is the past 23 months, up to 24 months, or about
14 690 or up to 700 long days were indeed extraordinarily cruel,
15 inhumane, and truly extremely tormenting, especially mentally
16 tormenting.

17 But I really feel like whenever I introspect those
18 extremely harsh times, I love it. I have to really say I love
19 it. I love those extremely harsh times. Under today, a friend
20 of the government, I truly sincerely appreciate the government.
21 Regardless of this unusually harsh punishment, I truly
22 appreciate the government. The reason is -- with my whole
23 heart. The reason is, while I was being isolated 24/7,
24 especially when I was literally paralyzed by COVID for those
25 weeks, my mind was still active. I was introspecting in very

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1 depth, every single day, from the very early morning to the end
2 of the day.

3 I literally achieved a highly potent catharsis, a
4 purification of my characters and my soul by literally talking
5 over and over again to myself. Indeed, it was -- yes, it was
6 out of my truly astronomical guilt that I was feeling, and
7 intensifying, consolidating, almost every minute back then in
8 2020, just like a -- like a black hole, like sucking me inside,
9 and soaking me up into this kind of, like, a higher feeling of
10 a highly abysmal shame, dishonor, and I truly felt the
11 excruciating distress for filing those false applications, that
12 I canceled all of them.

13 I told myself over and over again that it doesn't
14 matter how long I canceled all of them at all. It doesn't
15 matter how early I canceled all those applications. It doesn't
16 matter either how much rehabilitation work you just mentioned,
17 your Honor, thereafter or even in the future I plan to do. It
18 really doesn't matter anything.

19 So I shouldn't have even started whatsoever at the
20 very, very early beginning. And especially during the 24/7
21 isolation during COVID infection, I also repeated to myself, I
22 swear I would never, ever, do anything wrong anymore. But not
23 only that, I would never, ever do anything immoral anymore.

24 So far, I've been doing well because I absolutely have
25 zero ticket in both MCC and MDC over the 23 up to 24 months,

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1 zero, because in these two jails, even if you put a book on a
2 bunk or you forget to wear a uniform in the unit, so you got to
3 take eye contact zero. That's why I want to say, actually, my
4 friends, my family, and actually the whole world from here
5 overseas know that, one, Hummer – me – Hummer Mars, they know
6 me, is committed to something, he can always get it done, and
7 that's my standard.

8 So today, your Honor, I'm actually so confident to
9 promise you, your Honor, today under oath in the Court, you
10 will never, ever see me here like this, like in the shame,
11 anymore.

12 And I will precisely produce a purified – that's my
13 standard – purified, while very, very humble person to show to
14 you at our very first court-involved supervised release
15 hearing, you will have -- if I have the luck to meet you again,
16 you will see that. And today, this very allocution must be
17 together with my very in-depth introspection every day back in
18 my COVID 24/7 isolation, will be repeated, just like before,
19 and in the wee hours of every early morning of every single
20 day, for my entire life, to make sure I can live, infallibly
21 and humbly, I say perfectly law-abiding and morally purified
22 resident of our country for the rest of my life, definitely
23 holding with my highly profound and intense remorse, sorrow,
24 pain for doing all this wrong, for the entire life, forever,
25 the rest of my life.

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1 And, once again, my most heart-to-heart apologies to
2 you, to all the country, everybody in our society. I am so, so
3 very sorry, very sorry. And never again...

4 THE COURT: You know, Mr. Ma, I don't have any doubt
5 about how sorry you are. The whole matter is a tragic one.
6 And I know, from the first line in your letter, that you are
7 remorseful and apologetic.

8 I have a suggestion. I don't know if you will
9 appreciate it or not, but I think -- this is just a personal
10 opinion -- that you would do better, in a sense, to start
11 looking forward at what comes next for you, and how you can be
12 successful, and how you can reengage with your family and
13 friends. Again, this is just a personal opinion, but you don't
14 have to keep beating yourself on your chest or on your head or
15 in letters about what's happened in the past.

16 Yep, it was a tragedy, a mistake, whatever, but,
17 certainly, from my point of view, I am not seeking blood from
18 you or any of that angst. I know that you are apologetic, I
19 know that you are sorry, I know that you wish you could take it
20 back. I get it.

21 I think that, though, you would do yourself a favor,
22 as I say, if you could now try and put it behind you and focus
23 on how -- you're a young guy -- focus on how you can be
24 successful going forward. If there are programs at MCC --
25 you're going to be designated to a facility. Hopefully, they

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1 will have programs. Hopefully, they'll have mental health
2 assistance. I hope you will be able to put it behind you, in a
3 sense, so that you can focus on how you can be successful, as I
4 say, going forward.

5 That is the way to end this angst and tragic deep-felt
6 remorse and guilt and all of that. I get it, I get it, I know
7 you're terribly sorry. Start to look forward and see how you
8 can, in a positive way -- you've had some great experiences in
9 your educational career and in your work. You have lots of
10 good qualities, and you will be able to be successful, I
11 believe, again. Maybe not exactly in the same kind of work
12 that you did before. But that's what you should be starting to
13 do, if you can, like reading and talking to other people about
14 what opportunities are out there for you.

15 It may seem like it, but in your case, I don't think
16 it's the end of the world. I think you have a lot of strengths
17 and capabilities, and I think you will be able to see some
18 positives here and at least in the rest of your life, which you
19 have a long time ahead of you to become successful again.

20 So I get it, I know you're remorseful. I'm past that.
21 I think the goal here now is to have the sentence and you be
22 able to go through it in a positive way and then come out on
23 the other end in supervised release to begin with, and start to
24 have some positive experiences.

25 I know you've had a tough time in the MDC, and had an

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1 even tougher time you've imposed on yourself. I think that's
2 true, also. So that's just a thought.

3 THE DEFENDANT: Thank you, your Honor.

4 THE COURT: Yes.

5 THE DEFENDANT: I will keep everything in my mind, and
6 I do appreciate that. Thank you.

7 THE COURT: You bet.

8 Ms. Lockwood, did you want to be heard?

9 MS. LOCKWOOD: Briefly, just briefly.

10 Before working as a mitigation specialist, I was a
11 supervisor in probation, Eastern District, in the same place as
12 his attorney. And, honestly, I have never met a defendant who
13 is not only as remorseful as Mr. Ma, but somebody who just, as
14 you mentioned, thinks all the time about how he's going to
15 improve himself. He's been taking classes at Columbia
16 University while at the MDC, and the whole goal of that is so
17 that he would be more marketable when he gets out. We were not
18 allowed to see him or communicate with him during certain hours
19 on Thursdays because we knew he was in class. I've never had
20 anybody say that to me before.

21 His communication with us was overwhelming. You
22 mentioned that he may have obsessive compulsive disorder. I
23 fully agree with that. If you look at the entirety of his life
24 and the number of times he's communicated with -- sometimes I
25 would get an email from him five times in five minutes. It was

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1 compulsive. And I think filling out the applications may also
2 have been compulsive. He just can't stop himself.

3 He was speaking very slowly and articulately today,
4 but he can sometimes just speak so quickly because he wants to
5 get so much in, he doesn't want to waste a single moment, and I
6 feel like -- I know you're suggesting that a sentence of zero
7 months on Count Two and two years on Count Eight -- I may have
8 screwed them up, I'm sorry.

9 THE COURT: That's fine.

10 MS. LOCKWOOD: The tail wagging the dog.

11 THE COURT: Yes, that's what I said.

12 MS. LOCKWOOD: I think it's unfortunate that we don't
13 have statistics from Eastern District and Southern District,
14 because, in my experience, in Eastern District -- I can't speak
15 for Southern -- is that -- in fact, nationwide, Eastern District
16 was always extremely lenient when it came to fraud sentencings.
17 So, in my experience, I was there during Superstorm Sandy,
18 people weren't getting jail time after Superstorm Sandy. They
19 were doing the same kind of things -- they were applying for
20 grants and loans. I was actually one of those people applying
21 for a loan, an SBA loan, but in Eastern District, they were
22 getting months, not years.

23 So the fact that we don't have statistics from
24 S.D.N.Y. and E.D.N.Y. is so unfortunate, because for him to
25 spend more than he's already spent is just unbearable.

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1 I used to be the liaison from probation to the MDC.
2 I've always had an excellent relationship with them. I've
3 taken judges on tours of the MDC; I've taken lawyers on tours
4 of the MDC. Historically, in the past, the place was
5 immaculate. Not always above reproach, you know, things
6 happened. But now, I have many clients that have been at the
7 MDC, and the circumstances there are so harsh, there have been
8 times when they're only allowed out for minutes on a given day.
9 That's akin to being in solitary confinement. So I know Mr. Ma
10 is talking about his COVID restrictions, but that's on top of
11 what was already in place.

12 There was an attack in Texas, in Beaumont, and there
13 was a lockdown nationwide, where nobody could leave their cells
14 for weeks. There was no communication with families, there was
15 no communication with lawyers. Nobody knew what was going on.

16 So even though he's only been incarcerated for
17 23 months, it really equates to a lot more than that because of
18 the extremely harsh conditions he's endured.

19 I was in probation when they had a blackout at the
20 MDC, and when they had the blackout at the MDC, we thought that
21 was horrific. We thought that was the worst thing that could
22 have happened, you know. But that was a two-week period of
23 time where it was chilly, and I went and investigated on behalf
24 of Judge Dearie. That was nothing compared to what they've
25 gone through for this extended period of time, which Mr. Ma has

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1 endured the entirety of his incarceration. He hasn't had a
2 minute of incarceration that was an ordinary incarceration.

3 And he didn't mention today, but I know that he's a
4 vegetarian. So he asked for vegetarian foods because he knows
5 that the food can be crap in the prison system and because he
6 wanted to keep his weight down, because, as you read, he
7 suffers from gynecomastia, and without the testosterone, that
8 was going to evolve again. Can you imagine what that would be
9 like to develop breasts when you're incarcerated? How
10 horrifying would that be?

11 So he's a vegetarian. So during the course of these
12 lockdowns, the inmates that usually would work in the kitchen
13 were locked down, they weren't cooking. So he was getting
14 sandwiches, cold peanut butter sandwiches, and apple slices.
15 That's what he subsisted on for an extended period of time.
16 Humans don't live like this.

17 And right now, before Judge Brody, in the Eastern
18 District, I know Federal Defenders have filed a suit against
19 the MDC for the inhumane treatment of their inmates there. So
20 I know I said I'd be brief, and I guess I lied, but I'm really
21 passionate about this because he is extremely remorseful. Not
22 all offenders that commit fraudulent offenses are sincerely
23 remorseful, but he is clearly beating himself up about this.
24 And we know he's going to be different going forward. In part,
25 because of the harsh conditions, but he's had so much time to

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1 think about this.

2 His attorney and I have received hundreds and hundreds
3 of emails from him talking about these factors. I guess I
4 would like the Court to consider all these factors when
5 imposing sentence today.

6 THE COURT: I think I gave a recitation pretty
7 detailed at the outset. One reason I did that, and do that, is
8 to show that I have, in fact, taken all of these factors into
9 consideration, including the harsh treatment of prisoners. So
10 I get it.

11 MS. LOCKWOOD: Thank you.

12 THE COURT: I totally get it.

13 MS. LOCKWOOD: Thank you.

14 THE COURT: Government counsel?

15 MR. RAVI: Thank you, your Honor.

16 I just want to note --

17 THE COURT: Excuse me for a minute. Has he had any
18 mental health treatment? Was anything offered in the prison?
19 Any services? I know there's a psychologist over there, but
20 apart from that, are there any mental health programs or --
21 there are in some facilities.

22 MS. LOCKWOOD: I'd like to speak to that. They do
23 offer it under normal circumstances. But as we've been saying,
24 these are not normal circumstances. Because of the lockdowns,
25 programming has been extremely limited. The fact that he's

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1 able to attend classes with Columbia is miraculous. Most of my
2 clients at MDC have not only been able to participate in any
3 programming at all whatsoever during these lockdowns, but it's
4 been very difficult to obtain the services of medical
5 professionals and from the mental health treatment
6 professionals there.

7 My understanding is that the psychologist will walk
8 through the unit periodically, and you might be able to grab
9 them then, and Mr. Ma can speak to this, but I don't believe
10 he's been in any real sessions of any kind at the MDC.

11 You want to say something about that?

12 THE DEFENDANT: Thank you, Ms. Lockwood.

13 No, no programs so far.

14 THE COURT: Got it. Okay.

15 Counsel for the government?

16 MR. RAVI: Your Honor, I want to first kind of address
17 the survey, I think, that defense counsel indicated he had done
18 of other PPP fraud cases. I'm not sure about the kind of --
19 how meticulous that survey was or how it was done. I think, as
20 your Honor knows, Mr. Ma was one of the first defendants
21 arrested in connection with COVID loan fraud and, therefore, is
22 one of the first defendants to be sentenced, and there are
23 several more to come. I think we're just getting started in
24 terms of sentencing COVID loan defendants here in the country,
25 and several more are getting charged every day.

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1 That said, the only way I was able to do searches was
2 to Google press releases and Google articles regarding other
3 COVID loan cases. Based on just simple Google searching, I was
4 able to find at least one other case that a defendant pled
5 guilty to both bank fraud and aggravated identity theft. This
6 was an Oregon case involving a defendant named David Unitan,
7 U-n-i-t-a-n. That defendant submitted six EIDL applications
8 that ultimately received funding of \$295,000, and that
9 defendant was sentenced to 61 months in prison in Oregon.

10 I also note that defense counsel also indicated that
11 not a single other PPP loan fraud defendant had withdrew their
12 loans. I personally have charged three PPP loan cases, and
13 another one of those, a defendant, had also withdrawn their
14 loans once they had realized they were under investigation and,
15 therefore, did not receive any funds. So just in my subset of
16 three, I know of one, and so I'm not sure how complete the
17 survey that was done by defense counsel was, but I just wanted
18 to bring those points to your attention.

19 With respect to the unwarranted sentencing disparity
20 argument – again, it's true – none of the cases cited by
21 defense counsel are in this district, they're not in New York,
22 and I certainly can provide the Court with several cases where
23 defendants have gone in more than 24 months, and I have three
24 examples here that I can proffer to the Court, if you'd like to
25 hear. One was a Texas man that was sentenced in, I believe it

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1 was, the Southern District of Texas. He was sentenced to
2 110 months for obtaining PPP loans, totaling approximately
3 \$1.6 million.

4 THE COURT: 110 months?

5 MR. RAVI: 110.

6 That was in the Southern District of Texas.

7 In the Middle District of North Carolina, there were
8 three defendants that were charged as part of a scheme to
9 obtain \$2.7 million in loan proceeds. One defendant received
10 72 months, another defendant received 60 months, and the third
11 defendant received 66 months in prison.

12 In the Eastern District of Pennsylvania, a
13 Philadelphia man was sentenced to six and a half years for
14 stealing approximately \$1 million in PPP loan funds. I'll just
15 note all these amounts are less than a single application that
16 Mr. Ma submitted to try to get several millions of dollars in
17 loans.

18 So, again, the government did provide your Honor with
19 the JSON tool data from the last five years about defendants
20 who were convicted of offenses under the exact same guideline
21 as Mr. Ma, and also convicted of aggravated identity theft, and
22 I think your Honor has the average sentences were approximately
23 66 months in prison. In any event, these are all various
24 numbers and data points, but I think the government believes
25 that the proposed sentence of 66 months would be in line, and

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1 would not be inconsistent, with sentences in other cases based
2 on the data we have.

3 I also want to just correct one point that defense
4 counsel made that this is not a restitution case. Generally,
5 that's correct. I want to note for your Honor that Mr. Ma did,
6 in fact, receive \$20,000 in two loan advances pursuant to the
7 EIDL program. In advance of sentencing, defense counsel sought
8 to work to pay that back through Mr. Ma, and I believe that was
9 financed through his parents. That was, in fact, paid back.
10 So there was some restitution in this case. And even assuming
11 defense counsel's argument about the guidelines and how there
12 should be no loss, there was at least a loss of approximately
13 20,000 even under defense counsel's theory, and that guidelines
14 range is not zero to six months, it is, in fact, eight to
15 fourteen months, if you factor in a guideline range of over
16 fifteen months. So I just wanted to make that point.

17 Your Honor, a lot was said about the aggravated
18 identity theft count here. As your Honor knows, Mr. Ma was
19 charged with not only a single count of aggravated identity
20 theft, but it was three counts, and he pled guilty --

21 THE COURT: Just one slight correction: I don't think
22 a lot was said about aggravated identity theft, so I appreciate
23 your speaking to that issue.

24 MR. RAVI: Well, your Honor, I think defense counsel's
25 argument is that Mr. Ma should get two years for the aggravated

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1 identity theft and should get no time whatsoever for the
2 underlying bank fraud. But, also, in defense counsel's
3 submission, at page 13, he writes: In addition, while Mr. Ma
4 is technically guilty of aggravated identity theft, based upon
5 Second Circuit precedent, his use of an already existing
6 corporate email in the name of his former girlfriend for
7 purposes of communications regarding applications is far afield
8 from the intended purpose of the statute.

9 The government strongly disagrees with that statement.
10 The government provided your Honor, at Exhibit L, examples of
11 some of the emails that Mr. Ma sent in the name of his wife, in
12 the name of his former girlfriend. Use of someone else's
13 identity to commit fraud is exactly what that statute is
14 intended to cover, and I think that is demonstrated by an email
15 that the government actually received from the former
16 girlfriend that was the subject of the aggravated identity
17 theft that Mr. Ma pled guilty to. And after she was
18 interviewed by Special Agent McKeen about whether or not she
19 sent those emails, she wrote an email after that interview, the
20 following: Thank you for the email and talk today. I am truly
21 devastated and heartbroken that he – Mr. Ma – wanted to take a
22 COVID-19 loan and using my personal data. I don't know what
23 else he uses that for. I think I was nice to him in the past
24 and that I should not trust people who claim help, take care
25 and be your friend, especially in a country that I'm not a

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1 resident of, because you never know what they can do with your
2 personal data, and that's a really good example here.

3 And I think this victim actually broke down, during
4 the interview, when she realized that Mr. Ma had used her
5 identity to commit fraud. And that's exactly, I think, why
6 Congress imposed such a significant punishment on using someone
7 else's identity to commit fraud, because not only is it the
8 actual crime using their identity, but the effect it has on an
9 individual who knows that their name is being used without
10 their permission to do things and to do bad things. And I
11 think that is reflective of this victim's statement, but, also,
12 why the aggravated identity theft count here is important.

13 It's also true that not every PPP loan fraudster
14 commits aggravated identity theft. Mr. Ma used these other
15 identities, but several other defendants have not been charged
16 with that, and not every defendant uses three identities in
17 committing fraud. So I just want to make that point.

18 Your Honor, defense counsel also spoke about Mr. Ma's
19 withdrawal of the loan applications. I think the record is
20 clear that this was not some change of heart that the defendant
21 had where he decided to just give back the money. He clearly,
22 as evidenced by his Google searches about loan fraud, about
23 getting a defense counsel regarding loan fraud, about all these
24 other searches he continued to do, that he clearly believed
25 that he was going to get caught, and he wanted to take

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1 mitigation towards that. And that is relevant consideration
2 for your Honor in determining the conduct here.

3 Separately, it's also important for your Honor to
4 consider the PPE conduct that is reflected in the PSR. After
5 Mr. Ma withdrew his loan applications, he continued to have him
6 and others make false representations that his company, NYIC,
7 was representing Governor Cuomo and New York State in trying to
8 procure PPE equipment. Your Honor likely recalls --

9 THE COURT: I think I mentioned that.

10 MR. RAVI: You did.

11 And your Honor likely recalls, in May of 2020, how
12 difficult it was to get PPE equipment to those who needed it,
13 how important it was at that time for governments and agencies
14 and hospitals to get this equipment. And, here, we have
15 Mr. Ma, who continued, even after he withdrew his loan
16 applications, continued to make false representations in what
17 intends to be a scheme to get this PPE equipment without paying
18 for it in advance by representing he was a registered vendor
19 with New York State.

20 So I think that, again, goes to Mr. Ma's mindset
21 during that entire time, and it's consistent with his statement
22 that I quoted at the beginning of our sentencing submission,
23 that he was out there to get money, and to take advantage of
24 this pandemic. This was not a defendant who needed to do that.
25 He was living in a 1-1/2 million dollar condo. He clearly was

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1 getting financing and wealth from his parents. He has an
2 incredible network of friends and family support. The only
3 explanation for what he did was greed. That's it, plain and
4 simple. And that is also an important distinction from many
5 other fraud defendants, who oftentimes are in dire straits, who
6 are trying to get money to feed their family, who don't have
7 the financial network and the support that someone like Mr. Ma
8 had.

9 Your Honor, my final point is the importance of
10 general deterrence here in particular. I think the mitigation
11 specialist spoke about how fraud sentences are very lenient in,
12 apparently, the Eastern District of New York, but that's part
13 of the problem. A significant sentence here, particularly at
14 this stage where sentencings are still happening here in the
15 Southern District of New York, Eastern District of New York,
16 and will continue to happen for years ahead – I believe this is
17 one of the first sentencings regarding PPP fraud in this
18 district – and it's important to send a message that this type
19 of fraud, during the extremely difficult circumstances facing
20 the country during the pandemic, and which is still facing the
21 country, should, and deserves, a significant sentence.

22 For all those reasons, the government does believe a
23 66-month sentence is appropriate, and that does take into
24 account the fact that Mr. Ma, unlike other defendants, did not
25 receive and spend the money that he sought to get, but, still,

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1 a significant sentence is necessary.

2 THE COURT: Okay.

3 I think we went over asking the parties if they had
4 any further objections to the presentence report. I think
5 defense counsel said nothing beyond what has been submitted.

6 MR. KATZ: Correct.

7 THE COURT: I think Mr. Ma said the same thing, and I
8 think the government did. So if that's the case, I will now
9 preview the sentence, I'll give you an opportunity to comment
10 on the preview, and then impose the sentence.

11 So I think you've had a very full discussion here, and
12 the submissions have been excellent and thorough. I've read
13 them all, and I think it's now time to move to the next phase,
14 which is sentencing.

15 My intention is to impose a below-guideline sentence,
16 so to speak, of 52 months combined; that is to say, 26 months
17 on Count Two, which is the fraud, so to speak, and 24 months,
18 which is mandatory consecutive, for the identity theft -- I
19 mean 28 and 24. My math is wrong. The total is 52 months;
20 28 months on Count Two and 24 months on Count Eight, for a
21 total of 52 months of incarceration.

22 The guideline range for Count Two is 51 to 63 months,
23 and that's followed by 24 months consecutive on Count Eight.

24 The offense level here was 24 and a Criminal History
25 Category I.

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1 And then I intend to impose a term of supervised
2 release following incarceration of five years, and that would
3 be subject to what are called mandatory standard and special
4 conditions. The mandatory conditions are that defendant not
5 commit another federal, state, or local crime; that he not
6 illegally possess a controlled substance; and that he refrain
7 from any unlawful use of a controlled substance.

8 He will be required to submit to one drug test within
9 15 days of placement on supervision, supervised release, and at
10 least two unscheduled drug tests thereafter, as may be directed
11 by the probation officer.

12 In addition, he is required to comply with what are
13 called standard conditions 1 through 12. Those are found on
14 pages 34 and 35 of the presentence report, and they include,
15 among other things, that Mr. Ma may not own, possess, or have
16 access to a firearm, ammunition, destructive device, or
17 dangerous weapon.

18 And then plus the following special conditions, which
19 I feel strongly about, and these special conditions are
20 reasonably related to the factors set forth in Section 18,
21 U.S.C., Section 3553(a)(1), (a)(2)(B), (a)(2)(C), and
22 (a)(2)(D), and which the Court also finds involve no greater
23 deprivation of liberty than is reasonably necessary for the
24 purposes set forth in Section 18, U.S.C., 3553(a)(2)(B),
25 (a)(2)(C), and (a)(2)(D), and are consistent with any pertinent

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1 policy statements issued by the U.S. Sentencing Commission.

2 These include that Mr. Ma shall be supervised in his
3 district of residence; he will be required to report to
4 probation within 48 hours of release from custody.

5 The next condition is throughout the term of
6 supervised release, he shall participate in weekly individual
7 therapeutic counseling by a licensed therapist and also weekly
8 one group session conducted by a licensed therapist for group
9 therapy. He may be required to contribute to the cost of
10 services rendered as by a copayment in an amount to be
11 determined by the probation officer based on such factors as
12 availability of third-party payment.

13 In addition -- are there any immigration consequences
14 for someone who's a permanent resident?

15 MR. KATZ: There very well may be, your Honor.

16 THE COURT: Ah, okay.

17 Then there is an additional special condition that
18 Mr. Ma shall cooperate with the Department of Homeland
19 Security, Bureau of Citizenship and Immigration Services, in
20 connection with any proceedings that they may bring to
21 determine his status in the U.S., and he's required to abide by
22 their rules, regulations, and laws.

23 I'm not imposing a fine. None is recommended by
24 probation.

25 Nor do I intend to impose any restitution. There does

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1 not seem to be a victim in the context of 18, U.S.C.,
2 Section 3663 or 3663(a).

3 I am intending to impose a \$200 special assessment,
4 which is mandatory under 18, U.S.C., Section 3013.

5 Briefly, the reasons for the sentence are that --
6 well, first of all, the offense level is 24, the criminal
7 history category is I, the guideline range is 51 to 63 months
8 on Count Two and 24 months consecutive on Count Eight, so this
9 sentence is below the guideline range. I, nevertheless,
10 believe that this sentence is appropriate given, in particular,
11 the seriousness of the offense. Both the fraud and the
12 identity theft are, in my opinion, quite serious, and the need,
13 therefore, for punishment and deterrence. By deterrence, I
14 agree with the assistant, particularly general deterrence.
15 These are programs designed to help people who need it, and
16 it's important that we tell people that if they fraudulently
17 submit applications for loans, that they will be punished.

18 I have considered, also, the nature and the
19 circumstances of the offense and the fact that Mr. Ma expressed
20 his remorse early and quickly, and his shame as well -- I hope
21 he gets beyond that, is able to in his personal life -- as well
22 as the history and characteristics of Mr. Ma. And there, I
23 think, the need for the therapeutic counseling comes in; I
24 think there is a strong need for it both on an individual and
25 group basis, and if, for no other reason, although I think

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1 there is other reason, for the difficult time he and others
2 have while incarcerated here in the New York City prisons, both
3 MCC and MDC.

4 I think this sentence reflects the seriousness of the
5 offense, promotes respect for the law, provides a just
6 punishment, affords adequate deterrence, particularly – I
7 underscore again – general deterrence. I think it protects the
8 public from further crimes and endeavors to provide Mr. Ma with
9 needed particularly medical – I'm talking about mental health –
10 and correctional treatment in the most effective manner.

11 So if defense counsel wishes to comment on Mr. Ma or
12 the government, they certainly may, and then I'll impose the
13 sentence.

14 MR. KATZ: Thank you, your Honor.

15 No comment. Obviously, we've made our position clear.
16 We respectfully disagree with your Honor, but you are the
17 Judge, and you get to make that decision.

18 There are just two points I would like to raise.
19 Pursuant to the plea agreement, I'd ask that the remaining
20 counts be dismissed pursuant to that agreement.

21 I also ask for your Honor's recommendation that Mr. Ma
22 be permitted to serve his sentence at the camp at Otisville,
23 which will allow his family to come visit him. They reside in
24 the New York City area.

25 THE COURT: I'll make that recommendation, absolutely.

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1 MR. KATZ: Thank you.

2 THE COURT: Mr. Ma, anything further you wanted to
3 say?

4 THE DEFENDANT: I want to appreciate your Honor's
5 advice again, your Honor, and I will keep everything in my
6 mind, and I will do, accordingly, precisely. I will never let
7 you down. Thank you, your Honor.

8 THE COURT: Thank you.

9 How about the government?

10 MR. RAVI: No, your Honor. I'll just -- in response
11 to defense counsel, I would do this typically at the end, but I
12 will --

13 THE COURT: Yes, that's when I will solicit that
14 application.

15 MR. RAVI: Okay.

16 THE COURT: Then if Mr. Ma would stand.

17 The guideline range is 51 to 63 months. That's on
18 Count Two, the fraud count, and that's followed by 24 months
19 consecutive for the identity theft on Count Eight.

20 Having considered the Sentencing Reform Act of 1984,
21 plus the United States Sentencing Guidelines, and most
22 especially the factors at 18, United States Code, Section
23 3553(a), it is my judgment that Mr. Muge Ma be committed to the
24 custody of the Bureau of Prisons to be imprisoned for a term of
25 52 months with credit for the time he's already served.

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1 I will make a recommendation that he serve at the camp
2 at Otisville.

3 That's followed by five years of supervised release,
4 subject to the mandatory, the standard, and the special
5 conditions that I outlined and incorporate here by reference.

6 No fine, although -- hold on, maybe I should mention
7 the special conditions again -- that he be supervised in his
8 district of residence; that he report to probation within 48
9 hours; the weekly individual and group therapeutic counseling;
10 and cooperation with the Department of Homeland Security.

11 No fine.

12 No restitution, as we have discussed.

13 A \$200 special assessment.

14 I believe that this sentence is squarely supported by
15 the factors at 18, U.S.C., Section 3553(a).

16 Does either counsel know of any legal reason why this
17 sentence should not be imposed as so stated?

18 Starting with the government?

19 MR. RAVI: Your Honor, on the term of supervised
20 release, I just want to clarify: I think your Honor is
21 intending to impose a term of five years' supervised release on
22 Count Two with a concurrent term of one year on Count Eight?

23 THE COURT: Is that -- I hadn't thought that through,
24 but I mean five altogether. So five is the substantive -- in
25 my opinion, the most substantive count, and five years is on

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1 Count Two, one year on identity theft, to run concurrent, yes.

2 MR. KATZ: That's the statutory maximum on the
3 aggravated identity theft.

4 MS. LOCKWOOD: Right.

5 THE COURT: Did you want to add anything? Any reason
6 why this sentence should not be imposed as so stated?

7 MR. KATZ: With that correction, no, your Honor.

8 THE COURT: All right.

9 There is one other thing we have to go over.

10 I hereby order that the sentence be imposed as so
11 stated.

12 Now, Mr. Ma, we have to talk about the waivers of
13 rights that are contained in the plea agreement, and, here, I
14 would say, to the extent that you have not already waived your
15 appeal rights pursuant to the plea agreement, dated May 25,
16 2021, I notify you that -- well, let me tell you what you have
17 waived in the plea agreement.

18 In the plea agreement, you agreed not to file a direct
19 appeal or to bring a collateral challenge, including, but not
20 limited to, an application under 28, United States Code,
21 Sections 2255 and 2241, of any sentence that's within or below
22 the stipulated guideline range of 75 to 87 months of
23 imprisonment. And, of course, this sentence is substantially
24 below that guideline range, so these waivers of appeal do
25 apply.

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1 You also agreed not to challenge your conviction or
2 sentence on direct appeal or through these same habeas
3 challenges under 28, United States Code, Sections 2255 or 2241,
4 on the basis of any actual or perceived adverse immigration
5 consequences, including removal or -- well, removal -- I don't
6 think denaturalization applies, but if it does -- it's removal
7 or denaturalization, resulting from your guilty plea and
8 conviction.

9 So those are the rights that you've waived. To the
10 extent that there's any remaining appeal rights that I'm not
11 aware of, I'm notifying you, in any event, to consult with
12 counsel, and that you would have the right to appeal such
13 rights, and if you were unable to pay the cost of an appeal,
14 you would have the right to apply for leave to appeal
15 in forma pauperis. And if you request, the Clerk of Court
16 would prepare and file a notice of appeal on your behalf
17 immediately.

18 Do you understand the waivers that you agreed to in
19 the plea agreement?

20 THE DEFENDANT: Yes, I do, your Honor.

21 THE COURT: Okay.

22 And now I'll ask the government if there are any open
23 counts or counts that you want me to dismiss at this time?

24 MR. RAVI: Yes, your Honor. The government moves to
25 dismiss all open counts.

M4LKMUGS

1 THE COURT: The application is granted.

2 And the last question, starting with defense counsel:
3 Did you wish to add anything to today's sentencing proceeding?

4 MR. KATZ: No, your Honor. Thank you.

5 THE COURT: How about the government?

6 MR. RAVI: No. Thank you, your Honor.

7 THE COURT: All right. I think that concludes our
8 work for today.

9 Mr. Ma, I wish you the very best of luck going
10 forward. Thanks very much.

11 THE DEFENDANT: Thank you.

12 THE COURT: We're adjourned.

13 THE DEFENDANT: Thank you, your Honor.

14 THE COURT: Yes.

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